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EXAMINER

DAUERMAN, S

ART UNIT

PAPER NUMBER

1761

13

DATE MAILED: 06/14/99

Please find below and/or attached an Office communication concerning this application or proceeding.

Commissioner of Patents and Trademarks

*Note: As of 7/22/99 direct correspondence to
Judith M. Riley at the above address*

Office Action Summary

Application No.
08/817,278

Applicant(s)

Hoy

Examiner

Sherry Dauerman

Group Art Unit

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☒ Responsive to communication(s) filed on May 27, 1999

☐ This action is **FINAL**.

☐ Since this application is in condition for allowance except for formal matters, **prosecution as to the merits is closed** in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11; 453 O.G. 213.

A shortened statutory period for response to this action is set to expire 3 month(s), or thirty days, whichever is longer, from the mailing date of this communication. Failure to respond within the period for response will cause the application to become abandoned. (35 U.S.C. § 133). Extensions of time may be obtained under the provisions of 37 CFR 1.136(a).

Disposition of Claims

☒ Claim(s) 1-10, 13, 18, 19, 22, 24, and 26 is/are pending in the application.

Of the above, claim(s) _____ is/are withdrawn from consideration.

☐ Claim(s) _____ is/are allowed.

☒ Claim(s) 1-10, 13, 18, 19, 22, 24, and 26 is/are rejected.

☐ Claim(s) _____ is/are objected to.

☐ Claims _____ are subject to restriction or election requirement.

Application Papers

☐ See the attached Notice of Draftsperson's Patent Drawing Review, PTO-948.

☐ The drawing(s) filed on _____ is/are objected to by the Examiner.

☐ The proposed drawing correction, filed on _____ is ☐ approved ☐ disapproved.

☐ The specification is objected to by the Examiner.

☐ The oath or declaration is objected to by the Examiner.

Priority under 35 U.S.C. § 119

☐ Acknowledgement is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d).

☐ All ☐ Some* ☐ None of the CERTIFIED copies of the priority documents have been

☐ received.

☐ received in Application No. (Series Code/Serial Number) _____.

☐ received in this national stage application from the International Bureau (PCT Rule 17.2(a)).

*Certified copies not received: _____

☒ Acknowledgement is made of a claim for domestic priority under 35 U.S.C. § 119(e).

Attachment(s)

☒ Notice of References Cited, PTO-892

☐ Information Disclosure Statement(s), PTO-1449, Paper No(s). _____

☐ Interview Summary, PTO-413

☐ Notice of Draftsperson's Patent Drawing Review, PTO-948

☐ Notice of Informal Patent Application, PTO-152

--- SEE OFFICE ACTION ON THE FOLLOWING PAGES ---

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DETAILED ACTION

Claim Rejections - 35 USC § 103

1. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

2. Claims 1, 2 and 4 are rejected under 35 U.S.C. 103(a) as being unpatentable over the Swiss Colony Christmas Gift Book in view of Stonoga et al and the Gaines advertisement. In the gift book, Swiss Colony illustrates a variety of entirely edible cards that are in the form of chocolate substantially rigid edible panels having a front and back surface or in the form of a free standing structure with at least one message region and an edible message displayed within the region, and in the case of gift 1516, a means for positioning the card is illustrated that utilizes a thicker support section along the perimeter. Swiss Colony does not teach an edible greeting card specifically intended for ingestion by a pet and with communication designated for a pet. Stonoga et al. teaches an a greeting card for pets containing a component that is suitable for ingestion by a pet. Claim 1 of Stonoga et al. recites a greeting card that has a "message bearing indicia relating to the pet for whom the product is designed" and claim 2 recites that the card contains "the pet product being a food biscuit for pets". The Gaines advertisement illustrates that it is old to provide a totally edible pet food product that comprised an assortment of shapes and upon which

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there is indicia addressing the pet and owner. Therefore it would have been obvious to one having ordinary skill in the art at the time of the invention to modify the totally edible greeting card of Swiss Colony so that it could be used as a greeting card comprised of various shapes upon which there was indicia and which is intended for animals as per the teachings of Stonoga et al. and the Gaines advertisement. It is old to make entirely edible greeting cards as demonstrated by Swiss Colony and it would have been obvious to one of ordinary skill in the art that if the card is intended to be given to an animal, as in the case of Stonoga, that the edible composition would be healthy for animals, and furthermore the it would have been obvious to continue to draw from the widely known practice of producing the pet food product in an assortment of various known shapes upon which there is writing addressed to the animal and owner as demonstrated by the Gaines advertisement.

3. Claims 1, 2 and 4 are rejected under 35 U.S.C. 103(a) as being unpatentable over the Gaines advertisement in view of Stonoga et al. and the Swiss Colony Christmas Gift Book. The Gaines advertisement illustrates that it is old to provide a totally edible pet food product that is comprised of an assortment of shapes and upon which there is indicia addressed to the animal and owner and where the pet food product is in the form of rigid edible panels having a front and back surface with at least one message region and an edible message displayed within the region. The Gaines advertisement does not specifically teach a greeting card, a free standing structure, and a means for positioning the card that utilizes a thicker support section along the perimeter.

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Stonoga et al. teaches an a greeting card for pets containing a component that is suitable for ingestion by a pet. Claim 1 of Stonoga et al. recites a greeting card that has a "message bearing indicia relating to the pet for whom the product is designed" and claim 2 recites that the card contains "the pet product being a food biscuit for pets". Swiss Colony illustrates a variety of entirely edible cards that are in the form of substantially rigid edible panels having a front and back surface or in the form of a free standing structure with at least one message region and an edible message displayed within the region, and in the case of gift 1516, a means for positioning the card is illustrated that utilizes a thicker support section along the perimeter. Therefore it would have been obvious to one having ordinary skill in the art at the time of the invention to modify the totally edible pet food product of the Gaines advertisement so that it could be used as a greeting card upon which there was indicia relating to the pet for whom the product is designed and in various shapes as per the teachings of Stonoga et al. and Swiss Colony. It would have been beneficial to improve upon the design of the pet food product in the Gaines advertisement which already served as a treat for pets, such that it was used as a treat for particular occasions such as Birthdays and came in a variety of known shapes, including those which may be positioned vertically as taught by Stonoga et al. and Swiss Colony.

4. Claims 13 and 24 are rejected under 35 U.S.C. 103(a) as being unpatentable over either the combination of references as set forth in paragraph 3 or 4 above, and further in view of Stewart. The pet food product as modified by either of the references of paragraph 3 or 4 above, includes

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all that is recited in claims 13 and 24 except a means for creating an edible message in the form of a marker containing edible ink or wherein at least one edible message is positioned on edible film and the edible film is placed on the message region. In the abstract, Stewart teaches an edible film and method of using same for decorating food stuffs, as well as, an alternative example wherein the user controls subsequent writing by use of edible ink writing instruments, and the necessary components for decorating can be distributed in kits (page 5, line 5). Edible ink pens, equivalent to edible ink markers, are examples of the edible ink writing instruments that may be utilized as part of the decorating method (page 5, line 21). Therefore, it would have been obvious to one having ordinary skill in the art at the time of the invention to further modify the pet food product as applied to the combination of references as set forth in paragraph 3 or 4 above, such that the edible message is printed through the use of edible ink applied directly on to the food article, a decorating process that is widely known in the art, or by using a combination of edible ink and edible film to create the message in the message region as per the teachings of Stewart in order to inexpensively and artistically decorate the foodstuffs as is the accepted and obvious practice for edible items which carry messages. In the case of a greeting card, the use of edible film and edible ink allows the pet owner to customize the card so that it best expresses the communicated message and can easily incorporate desired images, making it an attractive personalized greeting card.

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5. Claims 5 - 7 are rejected under 35 U.S.C. 103(a) as being unpatentable over either the combination of references as set forth in paragraph 3 or 4 above, and further in view of Cox. The pet food product as modified by either of the references of paragraph 3 or 4 above, includes all that is recited in claims 5-7 except wherein the substantially rigid edible panel includes specific materials that are known to be suitable for ingestion by pets such as, calcium sulfate, alfalfa, and wheat. Cox teaches a method of forming a solid pellet of lipid material suitable for use as animal food which consists of wheat and alfalfa as recited in claim 6 and a method where the calcium source is calcium sulfate in claim 24. Therefore, it would have been obvious to one having ordinary skill in the art at the time of the invention to further modify the pet food product as applied to the combination of references as set forth in paragraph 3 or 4 above, such that the materials of composition of the card would be suitable for ingestion by a wide variety of pets and would comprise other materials known to be used in animal food such as calcium sulfate, alfalfa, and wheat as per the teachings of Cox in order to expand the suitability of the greeting card to include a wide variety of pets.

6. Claims 8 and 10 are rejected under 35 U.S.C. 103(a) as being unpatentable over either the combination of references as set forth in paragraph 3 or 4 above, and further in view of Brown, Jr. et al.. The pet food product as modified by either of the references of paragraph 3 or 4 above, includes all that is recited in claims 8 and 10 except wherein the substantially rigid edible panel includes specific materials that are known to be suitable for ingestion by pets such as, molasses,

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oats, and corn. In the abstract, Brown, Jr. et al teaches "a low-cost animal feed which is highly palatable and assimilable to domestic pets and livestock" and in which the animal feed utilizes molasses as a sugar source in combination with grain meals (col 2, line 12). The ground cereal grains are derived from oats, corn and other suitable grains (column 3, line 8). Therefore, it would have been obvious to one having ordinary skill in the art at the time of the invention to further modify the pet food product as applied to the combination of references as set forth in paragraph 3 or 4 above, such that the card the materials of composition would be suitable for ingestion by a wide variety of pets and that the composition would comprise materials known to be used in animal food such as molasses, oats, and corn as per the teachings of Brown, Jr. et al in order expand the suitability of the greeting card to include a wide variety of pets.

7. Claim 9 is rejected under 35 U.S.C. 103(a) as being unpatentable either the combination of references as set forth in paragraph 3 or 4 above, and further in view of Caris. The pet food product as modified by either of the references of paragraph 3 or 4 above, includes all that is recited in claim 9 except wherein the substantially rigid edible panel includes specific materials that are known to be suitable for ingestion by pets such as, dehydrated carrots. Caris teaches in his discussion on prior art that it is desirable to add dried pieces of vegetables to pet food (page 2, line 1) and how the dehydrated vegetables including carrots can be milled to digestible powder (page 2, line 45). Therefore, it would have been obvious to one having ordinary skill in the art at the time of the invention to further modify the pet food product as applied to the combination

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of references as set forth in paragraph 3 or 4 above, such that the card the materials of composition would be suitable for ingestion by a wide variety of pets and that the composition would comprise materials known to be used in animal food such as dehydrated carrots as per the teachings of Caris in order to expand the suitability of the greeting card to include a wide variety of pets.

8. Claim 26 is rejected under 35 U.S.C. 103(a) as being unpatentable over the combination of references as set forth in paragraph 3 or 4 above, and further in view of Ludlam. The pet food product as modified by either of the references of paragraph 3 or 4 above, includes all that is recited in claim 26 except wherein the substantially rigid edible panel includes specific materials that are known to be suitable for ingestion by pets such as, catnip. Ludlam teaches a simple inexpensive toy which is filled with a substance that appeals to the taste and smell of the feline where the filling includes and preferably consists of catnip. The toy is constructed such that the feline is able to get at the contents of the filling material, and devour the same (column 2, lines 56-67). Therefore, it would have been obvious to one having ordinary skill in the art at the time of the invention to further modify the pet food product as applied to the combination of references as set forth in paragraph 3 or 4 above, such that the card the materials of composition would be suitable for ingestion by a wide variety of pets and that the composition would comprise edible materials known to be used in animal food and toys such as catnip which is highly attractive to

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felines as per the teachings of Ludlam in order to expand the suitability of the greeting card to include a wide variety of pets.

9. Claim 22 is rejected under 35 U.S.C. 103(a) as being unpatentable over the combination of references as set forth in paragraph 3 or 4 above, and further in view of Spanier et al. The pet food product as modified by either of the references of paragraph 3 or 4 above, includes all that is recited in claim 22 except wherein the substantially rigid edible panel includes specific materials that are known to be suitable for ingestion by pets such as, raw hide. In the abstract, Spanier et al teaches a process for preparing raw hide that is chewed and/or eaten by dogs. The product of the invention of Spanier et al "can be raw hide in any shape which can be chewed". Examples of shapes, raw hide molding processes, and end user animals are discussed in column 13, lines 6-17. Extrusion is listed as one of the molding processes that may be used to form strips of raw hide of varying thickness. Therefore, it would have been obvious to one having ordinary skill in the art at the time of the invention to further modify the pet food product as applied to the combination of references as set forth in paragraph 3 or 4 above, such that the materials of composition would be suitable for ingestion by a wide variety of pets and that the composition would comprise edible materials known to be used in animal food and toys such as raw hide which is highly attractive to dogs and other teeth bearing mammals as per the teachings of Spanier et al in order to offer a broader assortment of chewable greeting cards to canine and teeth bearing mammals.

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10. Claim 18 is rejected under 35 U.S.C. 103(a) as being unpatentable over the combination of references as set forth in paragraph 3 or 4 above, and further in view of Binsho (assignee) and Wiebrecht. The pet food product as modified by either of the references of paragraph 3 or 4 above, includes all that is recited in claim 18 except that the greeting cards comprises at least two substantially rigid edible panels and an edible joining means which is used for joining at least one substantially rigid edible panel to another. In the abstract, Binsho teaches a product in which there are several sheets of edible film or food on which there is an image or design printed. The sheets are connected to make a set and used as a confectionery or snack. Wiebrecht teaches an edible foldable package which consists of two sections of baked pastry compartments wherein the two sections are connected by a hinge which consists of an edible material. Therefore, it would have been obvious to one having ordinary skill in the art at the time of the invention to further modify the pet food product as applied to the combination of references as set forth in paragraph 3 or 4 above, such that the card would comprise of at least two rigid edible sections as per the teachings of Binsho since it is well known that greeting cards are offered in a variety of shapes that include more than one rigid section. In keeping with the concept of a totally edible greeting card, it would have also been obvious to one having ordinary skill in the art at the time of the invention to further modify the pet food product as modified by either of the references of paragraph 3 or 4 above, such that the card would comprise of at least two rigid edible sections as per the teachings of Binsho and that the sections would be connected by an edible hinge as per the teachings of Wiebrecht. It is noted that the materials of composition utilized would be suitable for

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ingestion by a wide variety of pets as discussed prior rejections in this action. By offering a variety of styles, such as single rigid sectioned cards and folded multiple sectioned cards that are connected by an edible joining means, the aesthetic appeal and overall selection of available card designs will be increased.

11. Claim 19 is rejected under 35 U.S.C. 103(a) as being unpatentable over the combination of references as set forth in paragraph 3 or 4, as applied to claims 18, and 22 above, and further in view of Bach. The pet food product as modified by either of the references of paragraph 3 or 4, and as applied to claims 18, and 22 above, includes all that is recited in claim 19 except wherein the greeting card of claim 18 further includes a plurality of holes for joining and the edible means for joining comprises a flexible rawhide strip threaded through the holes of the said substantially rigid edible panels. Bach teaches a historic book binding technique where the substantially rigid panels are arranged in order and in which holes are punched through said panels (column 1, lines 48-51). A strip of sewing material or heavy duty thread is secured by tying in the last hole of one of the ends and overcast from side to side through each of the holes (column 2, lines 70-73). After being drawn through each of the holes, the strip is secured to prevent its pulling loose by tying or other suitable means (column 2, lines 98-100). Therefore, it would have been obvious to one having ordinary skill in the art at the time of the invention to further modify the pet food product as applied to the combination of references as set forth in paragraph 3 or 4 above, and as applied to claims 18 and 22 above, such that the greeting card of claim 18 further includes a

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plurality of holes for joining and in which the joining means comprises a flexible strip threaded through the holes of the substantially rigid panels as per the teachings of Bach. It is obvious that the composition of the utilized materials would be suitable for ingestion by a wide variety of pets as discussed in prior rejections of this action. It is also obvious from the references and discussion in rejection 10 of this action that rawhide can be made into any shape. One such means of forming rawhide shapes is extrusion in which the molding process may be used to form strips of raw hide of varying thickness. The benefit of making the flexible strip from rawhide that is used to join a plurality of edible rigid panels is that rawhide is consistent with approved materials that comprise animal food as required for the edible features of the greeting card of claim 18. Specifically rawhide is a material that can be easily formed for the end use of flexible strips and the total combination provides another style of edible greeting cards which results in an increased selection of design and aesthetic appeal for the greeting card product.

12. Claim 3 is rejected under 35 U.S.C. 103(a) as being unpatentable the combination of references as set forth in paragraph 3 or 4 above, and further in view of Tomlinson. The pet food product as modified by either of the references of paragraph 3 or 4 above, includes all that is recited in claim 3 except that the greeting cards comprises means for positioning the substantially rigid edible panel in the vicinity of the pet, where said means are a wire having two ends, that is enclosed in a portion of said panel, the ends of the wire extending exteriorly of said panel so that said wire may be attached to a projecting member. Tomlinson teaches a novelty feeding device in

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the shape of a bell where the securing means is a single wire and the food is molded around the wire. A portion of the wire extends beyond the upper surface of the main body of the device in order to be bent around a suitable support (column 2, lines 56-62). Therefore, it would have been obvious to one having ordinary skill in the art at the time of the invention to further modify pet food product as modified by either of the references of paragraph 3 or 4 above, such that card the greeting card comprises means for positioning the substantially rigid edible panel in the vicinity of the pet, where said means are a wire having two ends, that is enclosed in a portion of said panel, the ends of the wire extending exteriorly of said panel so that said wire may be attached to a projecting member as per the teachings of Tomlinson. The addition of utilizing a known means for positioning such as wire results in an increased selection of design and aesthetic appeal, including the capability to conveniently position the greeting card product and expands the suitability of the greeting card to include a wide variety of pet, such as a hamster or bird.

Response to Arguments

13. Applicant's arguments with respect to claims 1-10, 13, 18, 19, 22, 24, and 26 have been considered but are moot in view of the new ground(s) of rejection. However, two references that were specifically addressed by applicant have been re-applied in the same manner and therefore, applicant's arguments with respect to those references have been addressed. Applicant's argument on page 6 stated that the illustration of Swiss Colony item number #1516 does not demonstrate "a peripherally thickened portion" which serves as a supporting base. After a careful

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review of the picture, it is noted that the base perimeter of said item gently curves out below the Santa Clause figure. Applicant's argument on pages 6-7 stated that the Stewart reference "teaches nothing more than edible films" and lacks "the means for creating the edible message", specifically a marker with edible ink. Applicant is again redirected to review the abstract of Stewart, as well as the title, which is "Edible film *and Method of Using Same.*". The last two sentences of the abstract particularly point out that the film may be distributed to an end user who in turn prints, draws, or otherwise decorates the film with edible ink writing instruments. Such instruments include edible ink pens (Stewart, page 5, line 21). Therefore, in response to applicant's arguments concerning both the aforementioned reference, the arguments are not considered persuasive.

14. The prior art made of record and not relied upon is considered pertinent to applicant's disclosure.

US Patent	259,915, 6/1882, Pratt	- discloses cord bookbinding through holes
US Patent	2,012, 545, 8/1935, Pickering et al	- discloses spiral binding for book rack
US Patent	3,107,651, 10/1963, Beck	- discloses uniquely shaped rawhide toy
US Patent	3,908,025, 9/1975, Miller et al	- discloses pet food w/ corn, wheat and oats
US Patent	4,362,748, 12/1982, Cox	- discloses shaped products for pets
US Patent	4,822,626, 4/1989, Spanier et al	- discloses biscuit with message region
US Design	Des.240,770, 8/1976, French	- discloses pizza shaped animal biscuit

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US Design	Des.241,184, 8/1976, French	- discloses ice cream cone animal biscuit
Foreign	DE 2834647 A1, 2/1980, Geissler	- discloses edible chewing gum book
PCT	WO 95/04471, 2/1995, Thompson	- discloses pet pasta product
Reference	Money Magazine, v16, pp. 125	- discloses pet greeting cards w/ edible

14. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Sherry Dauerman at telephone number (703) 305-0883. The examiner can normally be reached on Monday - Friday from 7:30 a.m. - 4:00 p.m..

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, David Lacey, can be reached on (703) 308-3535. The fax phone numbers for the organization where this application or proceeding is assigned are (703) 305-3599 and (703) 305-7718.

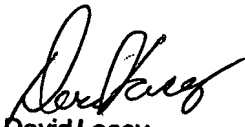
Any inquiry of a general nature relating to the status of this application or proceeding should be directed to the receptionist whose telephone number is (703) 308-0661.

June 9, 1999

Sherry A. Dauerman

Patent Examiner

Art Unit 1761


David Lacey
Supervisory Patent Examiner
Technology Center 1700 6/11/99